

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DOUGLAS MIHALIK,

Plaintiff,

v.

VERNETTA WEEMS, *et al.*,

Defendants.

NO. C19-1396RSL

ORDER AWARDING EXPENSES
OF SERVICE

This matter comes before the Court on plaintiff's "Motion for Compensation" in which he seeks to recover the costs of having to personally serve defendants Patti Robertson, Lettie Jones, Vernetta Weems, and Alfred Bocchicchio. Dkt. # 20. Pursuant to Fed. R. Civ. P. 4(i)(3), when an employee of the United States is sued in his or her individual capacity, plaintiff "must serve the United States and also serve the officer or employee under Rule 4(e)" "An individual . . . that is subject to service under Rule 4(e) . . . has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons." Fed. R. Civ. P. 4(d)(1). Unless good cause exists for the failure to sign and return the waiver provided by plaintiff, "the court must impose on the defendant . . . the expenses later incurred in making service" Fed. R. Civ. P. 4(d)(2). Plaintiff asserts that he sent waivers and the other documents specified in

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1 Rule 4(d) to four of the individual defendants via certified and first-class mail at the VA
2 Regional Office in Decatur, GA. Dkt. # 4 at 1-2; Dkt. # 20 at 2. The waivers were not returned,
3 and plaintiff seeks recovery of the fees he paid process servers and county sheriffs in order to
4 accomplish personal service.
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6 Defendants argue that they had no duty to waive service of summons because the
7 subsection of Rule 4 that applies to them is subsection (i), not subsection (e). While there are a
8 few cases that adopt this interpretation of Rule 4, they are not well-reasoned and ignore the
9 comments of the Advisory Committee that annotated the 2000 amendments which introduced the
10 relevant language. The waiver of service provision applies to those who are “subject to service
11 under Rule 4(e).” Rule 4(i)(3) specifically requires that service on a federal employee sued in his
12 or her individual capacity be accomplished under Rule 4(e). The Advisory Committee Notes to
13 the 2000 rule amendments make clear that Rule 4(i)(3)’s “[i]nvocation of the individual service
14 provisions of subdivisions (e) . . . invokes also the waiver-of-service provisions of subdivision
15 (d).” Rule 4, Advisory Committee Notes, 2000 Amend. ¶ 1. *See also Libretti v. Courtney*, No.
16 C14-0107SWS, 2015 WL 12927890, at *3 (D. Wyo. Apr. 17, 2015); *Johnson v. City of*
17 *Kenosha*, No. C13-0443, 2013 WL 5835994, at *1 (E.D. Wis. Oct. 30, 2013). The Court finds
18 that the waiver of service procedures of Rule 4(d) applied to defendants and they had a duty to
19 avoid unnecessary expenses related to service.
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22 Defendants raise a number of other objections to an award of expenses, including that the
23 United States was not served as required by Rule 4(i)(1), that it is “unclear” whether the waivers
24 sent to defendants reached them and/or met all the requirements of Rule 4(d)(1), and that
25 plaintiff failed to file a proof of service as to some of the defendants. In order to serve a federal
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1 employee in his or her individual capacity, plaintiff must personally serve the individual under
2 Rule 4(e) and the United States under Rule 4(i)(1). Plaintiff must accomplish both forms of
3 service, but there is no order in which service must occur and the rule requires an extension of
4 time in which to serve the United States once the failure to do so has been raised. Fed. R. Civ. P.
5 4(i)(4)(B). Defendants do not explain why a delay in serving the United States would excuse
6 their duty to avoid unnecessary costs. Defendants' next objection is unsupported. Although they
7 would presumably know if they did not receive the waivers or if the waivers they received were
8 defective, they did not submit a declaration or any evidence of such defects. With regards to
9 plaintiff's failure to file a proof of service on defendant Bocchicchio,¹ defendant Bocchicchio
10 acknowledged service when he joined in defendant Robertson's motion to dismiss. Dkt. # 32.
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13 Finally, defendants argue that there was good cause for their failure to sign and return the
14 waivers of service given the case law that held they were not subject to the waiver obligation.
15 The cases cited by defendants, *Northrop v. U.S.*, No. C08-0020, 2008 WL 4681640, at *1 (D.
16 Conn. Oct. 20, 2008), and *Brown v. Nalley*, No. C06-0047, 2007 WL 433139, at *2 (D. Colo.
17 Feb. 5, 2007), were, as noted above, not well-reasoned. In fact, they rely on Advisory Committee
18 notes from the 1993 version of the rules, a version which did not separately address service on
19 federal employees who were sued in their individual capacity. Nor is there any indication that
20 defendants were aware of or relied upon this case law when they received the waiver requests.
21 Defendants have not shown good cause for refusing to sign and return the waivers and/or for
22 forcing plaintiff to incur additional and unnecessary costs to effect personal service.
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26 ¹ Plaintiff filed proofs of service for defendants Robertson, Weems, and Jones. Dkt. # 11, 28, and
27 29.

1 For all of the foregoing reasons, plaintiff's motion for the imposition of the costs of
2 service on defendants (Dkt. # 20) is GRANTED. Within thirty days of the date of this Order,
3 each defendant shall send the amounts specified below to plaintiff via first-class mail at 4231
4 Crawford Dr., Pensacola FL 32504:

5 Ms. Patti Robertson \$85.00

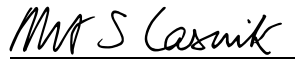
6 Ms. Vernetta Weems \$50.00

7 Ms. Lettie Jones \$50.00

8 Mr. Alfred Bocchicchio \$50.00

9 Plaintiff has not supported the award of any other costs and has now waived any such claim.
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12 Dated this 28th day of September, 2020.
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15 Robert S. Lasnik
16 United States District Judge
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